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Whooping Cranes and Piping Plovers:
Watershed Problem Solving on the Platte (April
27)

1995

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Whooping Cranes and Piping Plovers: Watershed Problem Solving on the Platte

Elizabeth Rieke

Gordon W. (Jeff) Fassett

University of Colorado Boulder. Natural Resources Law Center

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ELIZABETH (BETSY) RIEKE, GORDON W. FASSETT & JAMES S. LOCHHEAD, WHOOPING CRANES & PIPING PLOVERS: WATERSHED PROBLEM SOLVING ON THE PLATTE (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1995).

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PLATTE RIVER MOA NEGOTIATIONS
For "Hot Topics" - April 27, 1995

I. CENTRAL PLATTE RIVER HABITAT

- A. Resident and migrational habitat for 9 species listed under the ESA
- B. Migrational habitat for millions of waterfowl and approximately 90% of North American population of lesser sandhill cranes
- C. Significant reduction in amount and quality of habitat due to water depletions and land conversions

II. ENDANGERED SPECIES ACT REQUIREMENTS

- A. Under Section 7 of the ESA, each federal agency must insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the critical habitat for a listed species.
- B. Mechanism for assuring "no jeopardy" mandate is carried out is consultation with the Fish and Wildlife Service.
- C. If, during the consultation, the Fish and Wildlife Service determines that jeopardy to a listed species or adverse modification of critical habitat will result from the federal action, the Fish and Wildlife Service must suggest reasonable and prudent alternatives.
- D. Term "reasonable and prudent alternatives" means alternative actions identified during formal consultation that:
 - * Can be implemented in a manner consistent with the intended purpose of the action;
 - * Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;
 - * Are economically and technologically feasible;
 - and
 - * Would avoid the likelihood of jeopardizing the continued existence of a listed species or resulting in the destruction or adverse modification of critical habitat.

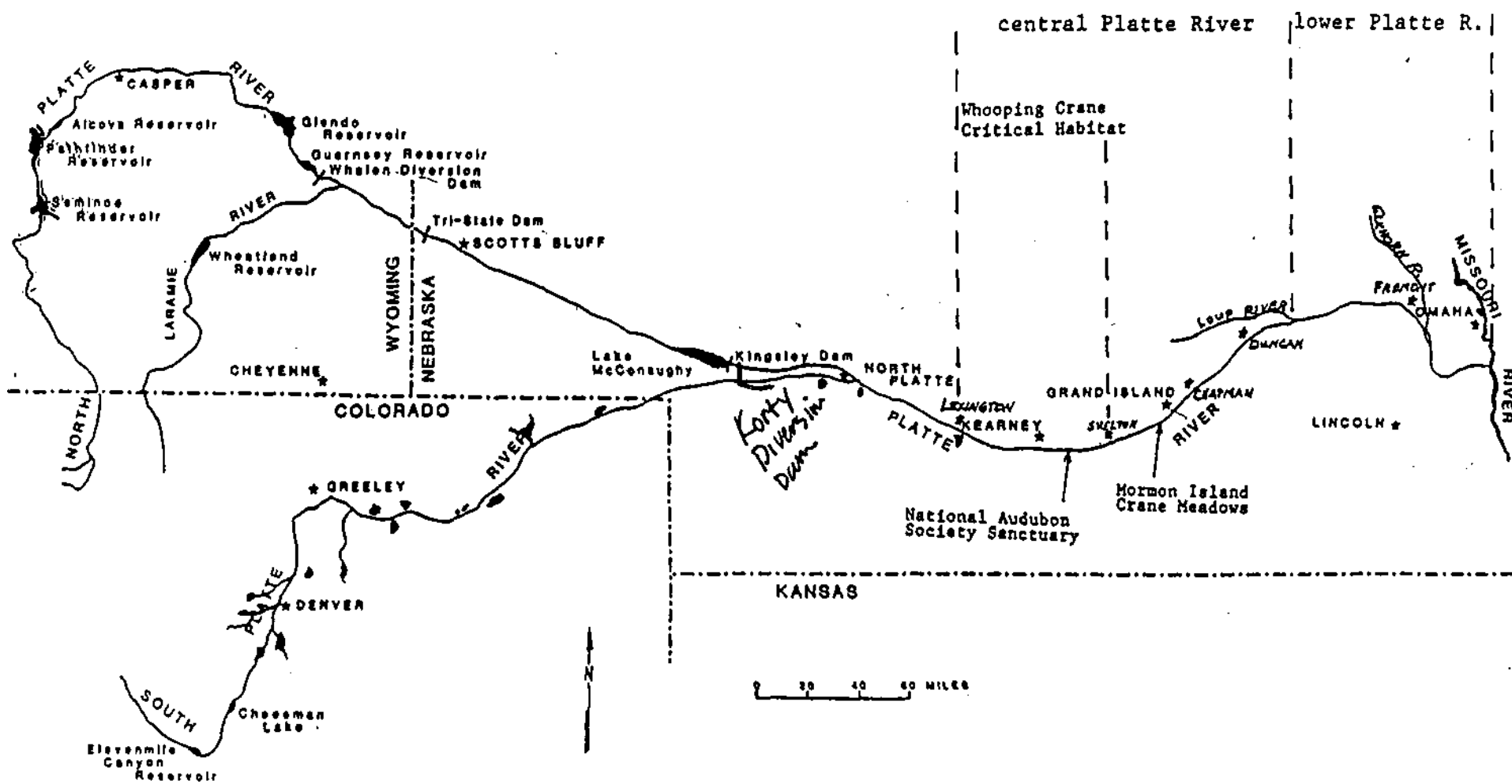


Fig. 1. Platte River drainage in Colorado, Wyoming, and Nebraska.

III. MEMORANDUM OF UNDERSTANDING

- A. Signatories: Governors of Colorado, Nebraska, and Wyoming and Secretary of the Interior
- B. Purpose: To initiate the development of a mutually acceptable Platte River Basin Endangered Species Recovery Implementation Program that would:
 - * Help conserve and recover federally listed species associated with the Platte River Basin in Nebraska upstream of the confluence with the Loup River;
 - * Help protect designated critical habitat for such species;
 - and
 - * Help prevent the need to list more basin associated species pursuant to the Endangered Species Act.
- C. Duration: One year ending in June 1995

IV. WHY ARE WE SEEKING A BASIN-WIDE SOLUTION?

- A. Multiplicity of projects and activities in Colorado, Nebraska, and Wyoming that have contributed to depletions of flows, changes in flow regime, and reduction in amount and quality of key types of terrestrial habitat.
- B. Some projects/activities are subject to Section 7 of the ESA, and some are not.
- C. Projects vary dramatically in size and in relationship to Central Platte habitat.
- D. Projects are authorized, funded, or carried out by a variety of federal agencies, including Forest Service, Bureau of Reclamation, Federal Energy Regulatory Commission, and Corps of Engineers.
- E. Collective impact of projects has caused degradation of Central Platte habitat.

F. Individual, project-by-project Section 7 consultations will not effectively and expeditiously address the habitat problems due to:

- * Multiplicity of consultations
- * Projects/activities not subject to consultation
- * Need for actions beyond control of project sponsors and federal agencies
- * Need for integrated approach to habitat restoration

V. COMPONENTS OF COMPREHENSIVE, BASINWIDE PROGRAM (as proposed by the federal negotiating team)

- A. Program purposes
- B. Long-term goals
- C. Adaptive management
- D. Short-term objectives
- E. Responsibility for program implementation
- F. Governance of the program

VI. STATUS OF NEGOTIATIONS

NEBRASKA DEPARTMENT OF WATER RESOURCES

Overview of U.S. Supreme Court Oral Argument Scheduled for March 21, 1995

The oral argument before the U.S. Supreme Court is based upon "exceptions" or appeals taken from the Special Master's Third Interim Report. Wyoming, the United States and Nebraska filed exceptions. The Interim Report was written after Nebraska and Wyoming requested permission to amend their original pleadings. Nebraska made new allegations concerning ground water usage, interception and reduction of return flows and other miscellaneous matters. Wyoming sought to modify its counterclaim by alleging Nebraska was wasting water and needed to be more efficient in its use. Against the United States, Wyoming alleged in its Fourth Cross-Claim that storage water was being used wastefully. Also, Wyoming alleged that the United States provided storage water in such a way as to interfere with the State's authority to regulate natural flows.

The Special Master allowed all of Nebraska's amendments but denied Wyoming's first which sought to modify its counterclaim against Nebraska. The Special Master ruled that the substance of the claim had been before the Supreme Court previously and had been rejected. As a result, Wyoming excepted or appealed from this ruling.

The Special Master did rule that Wyoming's Fourth Cross-Claim be allowed. The Fourth Cross-Claim is an extension of the claim Wyoming made against Nebraska relating to nonstorage water, a claim which the Special had rejected. Nebraska and the United States excepted or appealed from this ruling.

The oral argument will be an attempt to persuade the Court to either accept or reject each appeal. The case is obviously complex and while issues can be discretely identified, many are intertwined with others. In relation to Wyoming's counterclaim against Nebraska, if the Special Master's ruling stands, the threat of forced reductions in natural flow water is eliminated. The value of the estimated \$7 million dollars Wyoming spent on preparing this element would practically be eliminated. On the other hand, if Wyoming's cross-claim stands, then Wyoming may be able to force some reduction in storage water usage in Nebraska. Both Nebraska and Wyoming have asked the Court to treat Wyoming's Counterclaim against Nebraska and Wyoming's Fourth Cross-Claim against the United States the same.

The primary significance of what the Court may do as a result of the appeals and oral argument is that either Wyoming's threats to cut into Nebraska's water supply will be rejected now or on the other hand, she will be given the chance to prove whether her allegations are true, and if so, what the fairest or most equitable changes, if any, should be made in how water is allocated in the upper North Platte River basin. Because of existing unmet needs for water in Nebraska, it may well be that no changes would be required, even if Wyoming could prove her allegations.

**GORDON W. FASSETT
WYOMING STATE ENGINEER**

Gordon W. (Jeff) Fassett was first appointed State Engineer for the State of Wyoming on March 16, 1987. He was reappointed and confirmed by the State Senate in February, 1993. As State Engineer he is the lead water resource official for the State of Wyoming and constitutionally empowered with the general supervision and administration of the waters of the State. Prior to his appointment, Mr. Fassett served three years as Deputy State Engineer for Wyoming. Mr. Fassett was previously a principal and Vice-President of Leonard Rice Consulting Water Engineers, Inc. in Denver, Colorado, a water rights/water resources specialized engineering firm, that played an active role of technical service and testimony in the Big Horn River General Adjudication. Mr. Fassett's background also includes experience as a Water Resource Engineer with the Denver Water Department.

Mr. Fassett received his B.S. in Civil Engineering from the University of Wyoming in 1974 and has continued there with some graduate studies and is a lecturer at the Colleges of Engineering and Law. Mr. Fassett is a registered Professional Engineer in Wyoming and Colorado.

In conjunction with his position, Mr. Fassett serves, as President of the State Board of Control and is a member of the Colorado River Basin Salinity Control Forum. He served on the Board of Directors for the Association of State Dam Safety Officials and is currently a Board Member of the Interstate Council on Water Policy. He also is Wyoming's representative on the Bear River Commission, the Upper Colorado River Commission, the Yellowstone River Compact Commission, the Western States Water Council and many similar compact and interstate water associations. Mr. Fassett is active in several professional organizations and has been a participant in many seminars, workshops and meetings as a speaker on a variety of water resource topics. Mr. Fassett is also on the Board of Registration for Professional Engineers and Professional Land Surveyors.

June 10, 1994

Memorandum of Agreement for
Central Platte River Basin Endangered Species Recovery Implementation Program

THIS MEMORANDUM OF AGREEMENT (MOA) IS ENTERED INTO BY THE UNITED STATES OF AMERICA, represented by the DEPARTMENT OF THE INTERIOR (INTERIOR); the STATE OF COLORADO (COLORADO); the STATE OF NEBRASKA (NEBRASKA); and the STATE OF WYOMING (WYOMING).

I. PURPOSE

The purpose of this MOA is to initiate the development of a mutually acceptable Platte River Basin Endangered Species Recovery Implementation Program (Program) that would help conserve and recover federally listed species associated with the Platte River Basin in Nebraska upstream of the confluence with the Loup River; help protect designated critical habitat for such species; and help prevent the need to list more basin associated species pursuant to the Endangered Species Act (Act). The signatories' intent is that the Program, when developed and approved by all the signatories, will provide reasonable and prudent alternatives to avoid the likelihood of jeopardy to federally listed species and to offset any adverse modifications to designated critical habitat so existing water projects in the basin subject to section 7 consultation under the Act can continue to operate and receive any required permits, licenses, funding, or other approvals and be in compliance with the Act and so existing federal projects can be in compliance with the Act. The Program will also address the potential development of future water projects within the basin. The signatories to this MOA intend that these objectives will be achieved through a proactive, cooperative, basinwide Program that includes equal status for all signatories in the formulation and implementation of the Program; specific and realistic mileposts for Program implementation; and a fair, reasonable, proportionate, and agreed upon assignment of responsibilities for the provision, acquisition, maintenance, restoration, and protection of water and land habitat as key elements. With the concurrence of the signatories, other Federal agencies and representatives of the environmental and water user communities will be invited to participate in development of the Program.

II. NO DELEGATION OR ABROGATION

All signatories to this MOA recognize that they each have statutory responsibilities that cannot be delegated, and that this MOA does not and is not intended to abrogate any of their statutory responsibilities.

III. PLATTE RIVER BASIN HABITAT REQUIREMENTS AND FLOW RECOMMENDATIONS

Execution of this MOA shall not be interpreted as concurrence by the States with previously stated terrestrial requirements or the central Platte River flow recommendations prepared by the Fish and Wildlife Service (Service). The signatories acknowledge that an early and ongoing function of Program development is unanimous concurrence on habitat and flow objectives that are both realistically attainable and sufficient in order for the Program to serve as the reasonable and prudent alternative for section 7 consultations. If the Service decides that any increase in such terrestrial requirements or flow recommendations is needed while the MOA is in effect, it shall discuss such increases with the signatories to this MOA, make public the scientific bases for any such increases, provide an opportunity for comment, and give such comments due consideration before final action. If any of the signatories determines that concurrence cannot be achieved on such increases, it may terminate this MOA. Nothing in this Memorandum of Agreement shall in any way diminish or otherwise affect the ability of the signatories to advocate their respective positions in the relicensing of Kingsley Dam and related facilities.

IV. EFFECT ON EXISTING WATER PROJECTS SUBJECT TO CONSULTATION DURING THE TERM OF THIS MOA

Several existing basin water projects are now or will be subject to consultation under section 7 of the Act during the term of this MOA. With the consent of an affected project operator, the Fish and Wildlife Service will consider this MOA and progress made in Program development as the principle basis for reasonable and prudent alternatives in any biological opinion concerning such project during the term of this MOA. The Service shall provide signatories to this MOA with copies of all draft (if the federal action agency does not object), and final biological opinions issued in the Platte River Basin while this MOA is in effect. For all existing projects for which section 7 consultation occurs during the term of this MOA, the Service will evaluate and treat such projects in a similar manner except to the extent the Service determines such treatment to be inconsistent with Section 7 of the Act and explains such inconsistency to the project operator and the signatories to this MOA. If any of the signatories conclude that the Service is not treating all such projects in a similar manner and has not adequately justified such differential treatment, it may terminate this MOA. After the Program has been developed and agreed to by all the signatories, the Service will view the implementation of the Program as "new information" that would serve as the basis for reinitiation of consultation on such projects.

V. CONSISTENCY WITH APPLICABLE LAW

This MOA is subject to all applicable Federal and State law and nothing herein shall be construed to alter, amend, or affect existing law.

VI. SUBJECT TO APPROPRIATION

Availability of funds necessary to carry out this MOA is subject to appropriations by Federal and State governments.

VII. EFFECTIVE DATE AND DURATION

This MOA is effective upon execution by the signatories and, unless terminated by one of the signatories in accordance with Article III or IV, will remain in effect for one year. It is the goal of the signatories to make substantial progress in developing the Program in the first year including concurrence on the habitat and flow objectives. The signatories may extend this MOA by mutual agreement if they believe it to be necessary and beneficial.

United States of America, Department of the Interior

By *[Signature]* Date: *June 10, 1994*

State of Colorado

By: *[Signature]* Date: *June 10, 1994*

State of Nebraska

By: *[Signature]* Date: *June 13, 1994*

State of Wyoming

By: *[Signature]* Date: *June 12, 1994*



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION

Washington, D.C. 20240

June 16, 1994

Dear Friend,

Enclosed is information regarding the recently negotiated Memorandum of Agreement between the Secretary of the Interior and the Governors Nelson of Nebraska, Romer of Colorado and Sullivan of Wyoming. This landmark agreement memorializes the commitment by the Federal Government and the three States to work together in a basin-wide effort to restore fish and wildlife habitat along the central Platte River in Nebraska, while continuing to meet the economic needs of cities and farms throughout the region.

This MOA has two notable characteristics. The first is that no single State should bear a disproportionate burden of the solution. The second is that this agreement, and the basin-wide plan that will follow, is based on consensus. All three states and the Federal Government must agree on the various elements of the plan.

This Memorandum of Agreement reaffirms President Clinton's goal of ensuring that environmental issues are addressed in a cooperative and constructive manner. Comments or questions about the agreement are welcome, and may be directed to any of the Platte River contacts on the enclosed list.

Sincerely,

Daniel P. Beard

Enclosures

STATE OF COLORADO

EXECUTIVE CHAMBERS

136 State Capitol
Denver, Colorado 80203-1792
Phone (303) 866-2471

June 10, 1994



Roy Romer
Governor

The Honorable Bruce Babbitt
Secretary of the Interior
Interior Building 1849 "C" Street, NW
Washington, D.C. 20240

Dear Secretary Babbitt:

Thank you for your efforts in achieving an agreement between the states of Colorado, Nebraska and Wyoming concerning the development of a Recovery Program for Endangered Species in the Platte River Basin. This historic agreement illustrates that state and federal governments can work together to solve environmental problems on a regional, river-basin level. I look forward to continuing to work with you, Governor Nelson and Governor Sullivan in the development and implementation of a Central Platte River endangered species Recovery Program. However, this program must be consistent with existing interstate compacts and decrees.

The MOA provides that the Recovery Program will include ". . . a fair, reasonable, proportionate, and agreed upon assignment of responsibilities for the provision, acquisition, maintenance, restoration, and protection of water and land habitat as key elements." The meaning of this phrase does not imply any obligation, requirement or agreement on the part of Colorado to deliver any more water at the Colorado-Nebraska state line than is provided by interstate compact. Colorado's obligations under any recovery plan will be undertaken consistent with its obligations under interstate compact, but this agreement and the recovery plan cannot, and will not, enlarge on those obligations. We believe we can solve these problems collaboratively within the provisions of existing interstate compacts and decrees.

Again, thank you for your efforts in finalizing this important agreement.

Sincerely,

Roy Romer
Governor

cc: Governor Benjamin Nelson
Governor Mike Sullivan

STATE OF NEBRASKA

EXECUTIVE SUITE

P.O. Box 94848
Lincoln, Nebraska 68509-4848
Phone (402) 471-2244



June 6, 1994

E. Benjamin Nelson
Governor

The Honorable Bruce Babbitt
Secretary of the Interior
Interior Building
1849 C Street, NW
Washington, DC 20240

Dear Secretary Babbitt:

Thank you for the suggested language for the MOA on the Platte River Basin. I will accept it and am prepared to sign the MOA with your proposed change. Legal counsel for the Fish & Wildlife Service have also advised us that a minor change is needed in Article I. A proposed change to respond to that request is attached to this letter.

I am more receptive today to signing the MOA because my staff has reviewed the recently-released biological opinions for the Colorado front range projects. It seems apparent from those biological opinions that implementing the water part of the Nebraska Plan for the relicensing of Kingsley Dam and related facilities would provide a greater proportionate share of the water the Fish & Wildlife Service believes is needed than will the interim conditions proposed for the Colorado projects. However, because I believe the Nebraska plan represents the best possible long-term plan for the relicensing of Kingsley Dam and related facilities, I am willing to propose that the water part of that plan be endorsed by the Department of Interior as the interim water requirements for those projects. Doing so would allow that plan to serve as a demonstration of how it could also serve as the operational plan for the long-term license. In fact, I feel so strongly about the need to move in that direction that I am committed to discussing voluntary implementation of that plan with the districts and the Nebraska Game & Parks Commission as quickly as possible.

For the land habitat requirements to be imposed during the interim for Kingsley Dam and related facilities, my expectation is that the same formula used in Colorado will be used in Nebraska. I also expect that any other Nebraska projects subject to consultation during the development of the program will be treated on a par with the Colorado projects. If any of my expectations do not occur, Nebraska will not be reluctant to terminate the MOA.

I look forward to the future and to the development of a long-range basin recovery program that is acceptable to all of the states and meets the needs of the endangered species associated with the Platte River Basin in Nebraska.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Nelson".

E. Benjamin Nelson
Governor

EBN:JRC:clb
Enc.



STATE OF WYOMING
OFFICE OF THE GOVERNOR
CHEYENNE 82002

MIKE SULLIVAN
GOVERNOR

June 16, 1994

The Honorable Bruce Babbitt
Secretary of the Interior
Interior Building
1849 C Street, NW
Washington, DC 20240

Dear Secretary Babbitt:

I have executed the Memorandum of Agreement for Central Platte River Basin Endangered Species Recovery Implementation Program. This document has been the subject of considerable negotiation between the states to insure that existing consultations in those states are either benefitted by or, at least, not impacted by the proposed cooperative effort.

I support the concept of the cooperative effort. However, I do so with the understanding that all projects, both existing and proposed, now under federal review or Section 7 consultation will not be exempted from the discussions or during the identification of potential solutions. That is to say that we all go into this with a level playing field and a need and desire to work toward consensus solutions which protect the long term interests of our citizens. With best regards, I am

Very truly yours,

A handwritten signature of Mike Sullivan in dark ink, written over a horizontal line.

Mike Sullivan
Governor

MS:mkv

cc: Governor Nelson
Governor Romer

Echeverria

National Audubon Society



700 Broadway
New York, NY 10003-9562
Tel: (212) 979-3000
Fax: (212) 979-3188

June 7, 1994

The Honorable Bruce Babbitt
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Bruce:

I am writing to reaffirm the National Audubon Society's strong support for a prompt and comprehensive resolution of the relicensing proceedings for the Kingsley/North Platte projects on the Platte River in Nebraska, and to express, in the strongest possible terms, our position that Department of the Interior should reject a proposal which we understand the Governor of Nebraska has presented to you to defer implementation of major aspects of the expected relicensing decisions.

As we discussed at Audubon's Platte River Conference this Spring, resolution of these relicensing proceedings and positive action required by law to protect the valuable wildlife habitat of the Platte River is already long overdue. The licenses for the Kingsley/North Platte projects expired seven years ago in 1987 and the projects have been operating under annual licenses ever since. Initially, the Federal Energy Regulatory Commission decided to defer action on the relicensing applications pending completion of an ongoing Platte joint study process designed to develop definitive, comprehensive strategies for protecting and restoring the river. The conservation community initiated legal proceedings before the Commission objecting to this delay on the ground that the Commission's inaction violated Congress' mandate in the Electric Consumers Protection Act of 1986 that the Commission proceed with relicensing decisions expeditiously. The Commission ultimately agreed with our position that it was acting contrary to Congress' mandate and established a schedule for completing the relicensings. Additional delay has resulted from the Commission's preparation of a Draft Environmental Impact Statement which was widely criticized by Nebraska resource agencies, the Department of the Interior, and the conservation community as inadequate. In response to the Environmental Protection Agency's determination the initial draft did not satisfy the requirements of the National Environmental Policy Act, the Commission agreed to prepare a new draft. Now, after extensive additional research and analysis, the Commission has published a revised Draft

Environmental Impact Statement and there is reason to believe, finally, that an effective and comprehensive resolution of these proceedings is in sight.

This history of delay and inaction is particularly troubling in light of the conclusion by the U.S. Court of Appeals for the District of Columbia Circuit in 1989 that the Commission had acted illegally in failing to respond to a petition filed by the Platte River Whooping Crane Critical Habitat Trust seeking the imposition of interim terms and conditions to protect wildlife pending the completion of the relicensing proceedings. The Court ruled that the Commission had ignored substantial evidence demonstrating that the projects' ongoing operations were harming wildlife and wildlife habitat. In response to the Court's decision, the Commission adopted interim terms and conditions for the operation of the projects and restoration of degraded habitat. However, as you are undoubtedly aware, as a result of the refusal of the Central Nebraska Public Power and Irrigation District to cooperate voluntarily in implementing the interim terms and conditions, the Commission was forced to stay the major portion of these measures.

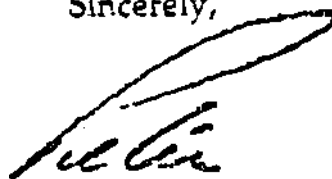
It is in the light of this history, including one previous attempt to put off the resolution of these proceedings pending completion of a "comprehensive" solution to Platte River issues, that we view with alarm the latest proposals from the State of Nebraska to defer once again a final resolution of these proceedings. We understand that the State of Nebraska, while urging that the Commission be asked to proceed to issue new long term licenses for the Kingsley/North Platte projects, has asked the Department to support the position that the licensees' obligation to actually comply with major features of the expected licensing decisions should be deferred pending completion of a new, multi-state effort to arrive at a comprehensive strategy for addressing Platte River issues. In our view, such a proposal is not only unwise as a matter of policy, but would violate Congress' expeditious relicensing mandate in the Electric Consumers Protection Act and subvert the goals and requirements of the Endangered Species Act.

As we have stated on numerous occasions, Audubon supports, in principle, your effort to reinstitute efforts to arrive at basin-wide solutions to Platte River issues. That positive effort should not be used, however, as a pretext for deferring important and immediate resource management questions that demand resolution. If and when a comprehensive basin wide program yields positive results, there will be an adequate opportunity for the licensees to file applications with the Commission requesting adjustments in

the requirements and schedule in the licensing orders. Prior to the completion of any such program, however, the licensing process and full implementation of the licensing decision should proceed without interference.

The National Audubon Society shares your interest in avoiding what you have characterized as "train wrecks" under the Endangered Species Act. In the case of the Platte River, however, the train wreck occurred a number of years ago, and the deplorable resource conditions are the result. Positive action to address these problems is needed now. We urge you to resist efforts by some to twist your words as way of promoting endless delay and continued destruction of critically important wildlife resources. In addition, I request that Audubon and other participants in these proceedings have an opportunity to meet with you or other senior Department officials to discuss this issue.

Sincerely,



Peter A. A. Berle
President and CEO

cc: Carol Browner, Administrator
Environmental Protection Agency

E. Benjamin Nelson, Governor
State of Nebraska



THE SECRETARY OF THE INTERIOR
WASHINGTON

June 9, 1994

Peter A. A. Berle
President
National Audubon Society
700 Broadway
New York, NY 10003-9562

Dear Peter:

Thank you for your letter of June 7 regarding the Kingsley/North Platte Projects in Nebraska. As you know, I have urged the Governors of Colorado, Wyoming, and Nebraska to join with the Department in exploring the possibility of developing a recovery program for the Central Platte River on a consensus basis. The response has been positive, and as of this writing, a Memorandum of Agreement (MOA) expressing our mutual commitment to this approach is in the final stages of preparation.

I want to assure you that the Department of the Interior remains committed to the objective of stabilizing and restoring the critical habitat of the Platte River at the earliest practical date. We are neither seeking nor encouraging "deferral" of conditions that might attach to a new FERC license for these facilities. You should also know that Governor Nelson has consistently expressed his position that the Memorandum of Agreement should not adversely impact the implementation of the Kingsley Dam relicensing proceedings. In addition, the Governor has not requested that I defer implementation of the Kingsley Dam relicensing proceedings nor any aspects of the expected relicensing decision. In the context of an MOA for the preparation of a recovery program, however, it is not unreasonable for the department to consider substantive requirements for environmental restoration which could be further refined upon development of the basin-wide program.

I appreciate the long-standing interest of National Audubon in the protection of the natural values of the Platte River, and I look forward to further discussion of these issues with you in the coming months.

Sincerely,

JAMES S. LOCHHEAD

BORN: Pasadena, California - 1952

EDUCATION:

Williamette University, Salem, Oregon
University of Colorado (B.A. 1974)
University of Colorado School of Law (J.D., 1978)

SELECTED PROFESSIONAL EXPERIENCE:

Executive Director, Colorado Department of Natural Resources,
March, 1994.
Shareholder, Leavenworth & Lochhead, P.C., Glenwood Springs,
Colorado, 1980-1994.
Areas of concentration: Water rights law, municipal and
special district law, real estate law, land use law,
business/commercial law.
Associate, Musick, Williamson, Schwartz, Leavenworth & Cope, P.C.,
1978-1980, Glenwood Springs, Colorado.
Admitted to practice before the Colorado Bar and the Federal
District Court, District of Colorado, 1978.
Admitted to practice before the United States Tenth Circuit Court
of Appeals, 1982.

APPOINTMENTS AND HONORS:

Governor's Representative to the Bureau of Reclamation Seven Basin
States Task Force on Colorado River Reservoir Operations, 1990
to present.
Colorado Commissioner for the Upper Colorado River Commission, 1987
to present.
Colorado River Mainstem Representative, Colorado Water
Conservation Board, 1983 to 1994. Vice-Chairman, 1985;
Chairmen, 1986-1987.
Advisory Board of the Natural Resources Law Center, University of
Colorado School of Law, 1992 to present. Chairman, 1992 to
present.
University of Colorado School of Law, Alumni Board of Directors,
1988-1992.
Board of Trustees, Valley View Hospital, Glenwood Springs,
Colorado, 1987 to 1994.
Member, The Rotary Foundation of Rotary International, Group Study
Exchange Team to Finland, June 1984.
City of Glenwood Springs, Parks and Recreation Commission,
1981-1983.
Member, Senator Tim Wirth's Committee for the Review of Nominees to
the Federal Bench, 1988-1992.

PRESENTATIONS:

- "Management Approaches to Addressing Takings Issues," University of Colorado School of Law, Natural Resources Law Center and the Byron R. White Center for American Constitutional Study Conference on Regulatory Takings & Resources: What are the Constitutional Limits? June 1994.
- "The Governor of Colorado's Proposal Regarding Colorado River Issues," Western State College 17th Annual Water Workshop, July 1992.
- "Interim Operation of Colorado River System Reservoirs, California's Use of Colorado River Water Above its Basic Apportionment, and Implementation of an Interstate Water Bank," Law of the Colorado River, Continuing Legal Education, Inc. and the Water Section of the Colorado Bar Association, January 1992.
- "Three Reasons Why Interbasin 'Water Marketing' on the Colorado River is Not in the Best Interests of the States of the Colorado River Basin," Water Marketing in Colorado's Future, Institute for Advanced Legal Studies, University of Denver College of Law, October 1991.
- "The Importance of Protecting the Prior Appropriation Doctrine in the Context of Water Quality Regulation," Western State College 14th Annual Water Workshop, July 1989.
- "The Development of Water Policy in Colorado," Western State College 12th Annual Water Workshop, July 1987.
- "Finding Water for the Front Range: Legal and Institutional Issues". Boulder County Bar Association and the Natural Resources Law Center, University of Colorado School of Law, April 1987.
- "Colorado Water Issues and Options". University of Colorado Natural Resources Law Center and Colorado Water Resource Institute, October 1985.
- "Colorado Water: At the Great Divide". Western State College 10th Annual Water Workshop, July 1985.

PUBLICATIONS:

- "Water Policy at the Crossroads," Colorado Water Congress, Colorado Water Rights, Vol. 13, No. 1, Spring 1994.
- "Colorado's Role in Emerging Water Policy on the Colorado River," Colorado Water Rights, Vol. 12, No. 2, Summer 1993.
- "Three Reasons Why Interbasin 'Water Marketing' on the Colorado River is Not in the Best Interests of the States of the Colorado River Basin," Institute of Advanced Legal Studies, University of Denver College of Law, October 1991.
- "The Importance of Protecting the Prior Appropriation Doctrine in the Context of Water Quality Regulation," Colorado Water Rights, Vol. 9, No. 1, Winter 1990.
- "The Development of Water Policy in Colorado," Colorado Water Rights, Vol. 7, No. 1, Winter 1988.
- "Transmountain Water Diversions in Colorado," Resource Law Notes, Natural Resources Law Center, University of Colorado at Boulder School of Law, No. 12, November 1987.

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